

66509-0008

10/627,547

REMARKS

This is a full and timely response to the Office Action mailed April 13, 2006 (the "Office Action"). Reconsideration of this application in light of the foregoing amendments and the following remarks is respectfully requested. Additionally, as a preliminary matter, Applicant requests that the attorney docket number be changed to 66509-0008 in the records of the Office.

Substance of the Interview:

Applicant thanks the Examiner for the courtesies extended during the in-person interview held March 30, 2006. The substance of the interview included a demonstration of a particular implementation of an online auction system by Applicant and a discussion of examples of how elements of claims 1 and 15 are distinct from U.S. Patent No. 6,216,114 ("Alaia"). The discussion related to Alaia was generally based on the arguments for patentability of the independent claims set forth in Applicant's Amendment filed January 30, 2006. In the interview, the Examiner agreed that the rejection of the claims over Alaia would be withdrawn. The Examiner indicated that a further prior art search would be performed and that a non-final office action pointing out procedural deficiencies in the claims would be issued.

Claims Status:

In this Amendment, claims 1, 5, 15, 19, 21-24, 26, 29, 30, 33, 37, 42, 43, 47 and 52-54 have been amended, and new dependent claims 55-61 have been added. No new matter has been added.

66509-0008

10/627,547

No claims have been canceled. Claims 2, 16, and 31 were previously canceled without prejudice or disclaimer. Consequently, claims 1, 3-15, 17-30 and 32-61 are currently pending for further action.

I. Indication of Allowable Subject Matter

None of the pending claims stand rejected based on prior art. On page 4 of the Office Action, the Examiner allowed claims 1, 3-15, 17-30, and 32-54 over the prior art subject to resolution of the § 112, second paragraph issues set forth in the Office Action.

II. Claim Rejections – 35 U.S.C. § 112

Claims 1, 3-15, 17-30, and 32-54 were rejected under 35 U.S.C. §112, second paragraph (hereinafter “§ 112”). Specifically, independent claim 1 was rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Office Action, page 3. The Examiner also requested that Applicant review and make appropriate corrections to independent claims 15, 29, 33, and 54 based on the rejection of claim 1. Office Action, page 4. Applicant respectfully traverses the § 112 rejections of the claims for at least the following reasons.

According to the Office Action, the recitation of “one or more servers configured to provide an auction service” in claim 1 “renders the claim indefinite because one cannot ascertain the scope of the claim as for the constituent part of the “online auction server system.” Office Action, page 3. Each of claims 1, 33, and 54 has been amended herein to recite “An online auction system” rather than “An online auction server system.” Applicant believes that these

66509-0008

10/627,547

amendments address and overcome the concern set forth in the Office Action. If for some reason the Examiner feels otherwise, Applicant respectfully requests that the Examiner provide clarification regarding his concern with the above-recited claim language.

The Examiner also expressed concern with the recitation of "a final successful bid being at least equal to the final preliminary bid" in claim 1. According to the Office Action, "[s]ince the claim does not define the final successful bid in context of the preliminary bidding component, one cannot evaluate the final preliminary bid in relation to the final successful bid." Office Action, page 3. The relevant recitation has been deleted from claims 1, 15, 29, 33, and 54 as amended. Therefore, this ground for rejection is obviated.

According to the Office Action, "[c]laim 1 does not clearly correlate the dynamic real-time component with the preliminary bidding component. More specifically, the Examiner asserts that the recitation of "continuing until a higher bid is no longer received" in claim 1 "does not specify what measure is used to determine the higher bid." Office Action, page 3. The relevant recitation of "continuing until a higher bid is no longer received" has been deleted from claims 1, 33, and 54 as amended. Therefore, this ground for rejection is obviated.

The Examiner further asks whether the recitation of "the preliminary bidding component offering for auction a plurality of items" in claim 1 means that there should also be a plurality of successful bids recited in the claim. The relevant recitation of a final successful bid has been deleted from claims 1, 15, and 29 as amended. Therefore, this ground for rejection is obviated.

In addition, the Examiner asserts that "[t]he 'whereby' clause [of claim 1] only recites intended outcome [sic] the process performed by the dynamic real-time component" and that the "whereby" clause "does not add any patentable limitation to the system itself and therefore is not

66509-0008

10/627,547

accorded any patentable weight.” The “whereby” clause to which the Office Action refers has been deleted from claims 1, 33, and 54 as amended. Therefore, this ground for rejection is obviated.

The Examiner also rejected claim 1 because the claim is allegedly “defective because it does not provide any connection between the two auction components.” Office Action, page 4. In accordance with the suggestion set forth on page 4 of the Office Action, claim 1 as amended recites “the dynamic auction component defining a starting bid for each of the plurality of items in the dynamic auction component based on the respective final preliminary bid from the preliminary bidding component.” This recitation provides a connection between the preliminary auction component and the dynamic real-time auction component recited in claim 1. Similar amendments have been made to claims 15, 29, 33, and 54. Therefore, this ground of rejection is respectfully traversed.

For at least the reasons described above and in view of the amendments to claims 1, 15, 29, 33, and 54, the rejection of the claims under § 112 should be reconsidered and withdrawn.

III. New Claims 55-61

Applicant has added new dependent claims 55-61, each of which depends from independent claim 1, 15, or 29. The newly added claims are thought to be allowable for at least the same reasons that independent claims 1, 15, and 29 are allowable. The new claims also recite independently patentable subject matter. Therefore, examination and allowance of the newly added claims is respectfully requested.

66509-0008

10/627,547

IV. Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

It is believed that any additional fees due with respect to this paper have already been identified in any transmittal accompanying this paper. However, if any additional fees are required in connection with the filing of this paper that are not identified in any accompanying transmittal, permission is given to charge account number 18-0013 in the name of Rader, Fishman and Grauer PLLC. If the Examiner has any question or comments, he is kindly urged to call the undersigned to facilitate prosecution.

Respectfully submitted,



Steven L. Nichols
Registration No. 40,326
Jeffrey R. Jeppsen
Registration No.: 53,072

DATE: July 14, 2006

Rader Fishman & Grauer PLLC
River Park Corporate Center One
10653 S. River Front Parkway, Suite 150
South Jordan, Utah 84095
(801) 572-8066
(801) 572-7666 (fax)

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted to the Patent and Trademark Office facsimile number ~~571-273-8300~~ on ~~July 14, 2006~~. Number of Pages: 25



Rebecca R. Schow